CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office
1900 SW 4th Avenue, Room 3100
Portland, OR 97201
phone: (503) 823-7307 - fax: (503) 823-4347
web: www.portlandoregon.gov/auditor/hearings

DECISION OF THE HEARINGS OFFICER IN UNCONTESTED CASE

File No: LU 11-203423 ZC
HO 4120004

Applicant: Julia Wood, Architect
333 S State St.,Suite V-192
Lake Oswego, OR 97034

Owner: Richard Larson
Paradise 39 Grape LLC
6010 NE Flanders St., Unit B-1
Portland, OR 97213

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representative: Sheila Frugoli

Site Address: 5624 WI/NE FREMONT ST (western abutting lot to 3431 NE 57th Ave.)

Legal Description: BLOCK 122 LOT 16, ROSE CITY PK

Tax Account No.: R723114540

State ID No.: 1N2E30AB 01000

Quarter Section: 2736

Also owns: BLOCK 122 LOT 1&2, ROSE CITY PK, R723114380, 1N2E30AB 00100

Neighborhood: Rose City Park

Business District: Portland International District Business Association

District Coalition: Central Northeast Neighbors

Plan District: None

Zoning: R2h, Multi-Dwelling Residential 2,000 zone with the h, Aircraft Landing overlay zone. The lot has a Comprehensive Plan Map designation of NC, Neighborhood Commercial

Land Use Review: Type III, Zoning Map Amendment (ZC)

BDS Staff Recommendation to Hearings Officer: Approval

Public Hearing: The hearing was opened at 8:59 a.m. on March 7, 2012, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 9:49 a.m. The applicant waived applicant's rights granted by ORS 197.763 (6)(e), if any, to an additional 7 day time period to submit written rebuttal into the record. The record was closed at the end of the hearing.

Testified at the Hearing:
Sheila Frugoli, BDS Staff Representative
Julia Wood, 333 S State Street, Suite V-192, Lake Oswego, OR 97034
Richard Larson, 6010 NE Flanders, Suite B-1, Portland, OR 97213
Fabio de Freitas, 1900 SW 4th Ave., Suite 500, Portland, OR 97201

Proposal: The applicant is requesting a Zoning Map Amendment, in compliance with the Comprehensive Plan Map, to change the base zone of the subject property from R2, Multi-Dwelling Residential 2,000 to CN2, Neighborhood Commercial 2. The h overlay zone will remain unchanged.

The subject lot is currently developed with a parking lot. The lot provides accessory parking to the commercial use at 3431 NE 57th Avenue. Both lots are under the same ownership. The applicant is requesting the zone change on the subject property in order to construct a covered trash collection area and a patio area for outdoor seating. The existing parking lot is grandfathered as a nonconforming use. The zone change is necessary in order to expand the commercial use (patio area and trash collection) onto the lot.

If this 7,600 square foot lot were redeveloped, the current R2 zone would allow a maximum of 3 residential dwelling units. In contrast, the CN2 zone allows retail, office and residential development. A maximum of 5,700 square feet of retail and/or office floor area would be allowed. The CN2 zone requires on-site parking and at least 15 percent of the site must be landscaped.

Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are 33.855.050, Approval Criteria for Base Zone Changes.

Hearings Officer Decision: The Hearings Officer takes note of Exhibit H.3; a letter from Victor Remmers, President, Everett Custom Homes. Mr. Remmers, in Exhibit H.3, stated that, "I do have

some concerns…" Mr. Remmers' "concerns" related to the trash enclosure screening/landscaping. The Hearings Officer finds that Mr. Remmers did not express "opposition" to the application in this case but rather expressed "concerns." The Hearings Officer finds that the trash enclosure will be enclosed with a wood structure and have a roof. Further, the Hearings Officer finds that landscaping, in the vicinity of the trash enclosure, will be to the L2 standard (includes trees and ground cover). Finally, the Hearings Officer finds that Mr. Remmers' concerns do not address relevant approval criteria.

It is the decision of the Hearings Officer to adopt and incorporate into this decision the facts, findings, and conclusions of the Bureau of Development Services in their Staff Report and Recommendation to the Hearings Officer dated February 24, 2012, and to issue the following approval:

Approval of a Zoning Map Amendment from R2, Multi-Dwelling Residential 2,000 to CN2, Neighborhood Commercial 2.

Basis for the Decision: BDS Staff Report in LU 11-203423 ZC, Exhibits A.1 through H.5, and the hearing testimony from those listed above.

Gregory J. Frank, Hearings Officer

March 9, 2012
Date

Application Determined Completed:	January 23, 2012
Report to Hearings Officer:	February 24, 2012
Decision Mailed:	March 12, 2012
Last Date to Appeal:	4:30 p.m., March 26, 2012
Effective Date (if no appeal):	March 27, 2012 Decision may be recorded on this date.

Conditions of Approval. This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or

development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OR 97201 (503-823-7526). Until 3:00 p.m., Tuesday through Friday, file the appeal at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., and on Mondays, the appeal must be submitted at the Reception Desk on the 5th Floor. **An appeal fee of $5,000 will be charged (one-half of the application fee for this case, up to a maximum of $5,000).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.
Who can appeal: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

Recording the final decision.
If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of approval. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

A. Applicant's Statement
   1. Project Description and Response to Approval Criteria
   2. Copy of Covenant - Prohibits Selling Two Lots Separately
   3. Traffic Impact Study, prepared by Lancaster Engineering
B. Zoning Map
   1. Existing Zoning
   2. Proposed Zoning
C. Plans & Drawings
   1. Site Plan, Identifies Zone Change Proposal
   2. Site Plan Identifies Proposed Improvements and Abutting Lots
   3. Site Plan, Details the Proposed Improvements
   4. Trash Enclosure Proposal – Elevation and Details
   5. Site and Utility Plan
D. Notification information
   1. Request for response
   2. Posting letter sent to applicant
   3. Notice to be posted
   4. Applicant's statement certifying posting
   5 Mailing list
   6. Mailed notice
E. Agency Responses
   1. Bureau of Environmental Services
   2. Bureau of Transportation Engineering and Development Review
   3. Water Bureau
   4. Fire Bureau
   5. Police Bureau
   6. Life Safety Review Section of BDS
   7. TRACS Print-Out Showing "No Concerns" from Site Development Review Section of BDS and Bureau of Parks, Forestry Division
F. Letters: NONE
G. Other
   1. Original LUR Application
   2. Site History Research
   3. Incomplete Application Letter to Applicant
   4. Pre-Application Conference Summary
H. Received in the Hearings Office
   1. Notice of Public Hearing – Sheila Frugoli
   2. Staff Report – Sheila Frugoli **(attached)**
   3. Letter – 3/2/12 – Victor Remmers

3a. Photos – Victor Remmers
4. PowerPoint Presentation printout – Sheila Frugoli
5. Record Closing Information sheet – Hearings Office

City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

STAFF REPORT AND RECOMMENDATION TO THE HEARINGS OFFICER

CASE FILE: LU 11-203423 ZC
PC # 11-160789
REVIEW BY: Hearings Officer
WHEN: Wednesday, March 7, 2012 at 9:00 AM
WHERE: 1900 SW Fourth Ave., Suite 3000
Portland, OR 97201

It is important to submit all evidence to the Hearings Officer. City Council will not accept additional evidence if there is an appeal of this proposal.

BUREAU OF DEVELOPMENT SERVICES STAFF: SHEILA FRUGOLI / SHEILA.FRUGOLI@PORTLANDOREGON.GOV

GENERAL INFORMATION

Applicant: Julia Wood, Architect
333 S State St.,Suite V-192
Lake Oswego, OR 97034
(503) 750-5672

RECEIVED
FEB 24 2012
HEARINGS OFFICE

Owner: Richard Larson
Paradise 39 Grape LLC
6010 NE Flanders St., Unit B-1
Portland, OR 97213

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Tax Account No.: R723114540
State ID No.: 1N2E30AB 01000
Quarter Section: 2736

Also owns: BLOCK 122 LOT 1&2, ROSE CITY PK, R723114380, 1N2E30AB 00100

Neighborhood: Rose City Park, contact Ed Gorman at 503-425-1611.
Business District: Portland International District Business Association, contact Thomas Wright at 503-249-3926.
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

Plan District: None
Zoning: R2h, Multi-Dwelling Residential 2,000 zone with the h, Aircraft Landing overlay zone. The lot has a Comprehensive Plan Map designation of NC, Neighborhood Commercial

Case Type: ZC, Zoning Map Amendment

Procedure: Type III, with a public hearing before the Hearings Officer. The decision of the Hearings Officer can be appealed to City Council.

Proposal: The applicant is requesting a Zoning Map Amendment, in compliance with the Comprehensive Plan Map, to change the base zone of the subject property from R2, Multi-Dwelling Residential 2,000 to CN2, Neighborhood Commercial 2. The h overlay zone will remain unchanged.

The subject lot is currently developed with a parking lot. The lot provides accessory parking to the commercial use at 3431 NE 57th Avenue. Both lots are under the same ownership. The applicant is requesting the zone change on the subject property in order to construct a covered trash collection area and a patio area for outdoor seating. The existing parking lot is grandfathered as a nonconforming use. The zone change is necessary in order to expand the commercial use (patio area and trash collection) onto the lot.

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Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are 33.855.050, Approval Criteria for Base Zone Changes.

ANALYSIS

Site and Vicinity: The applicant's site consists of two tax lots, the lot that is subject to this Zoning Map Amendment request is 7,600 square feet and is developed with a surface parking lot. It has street frontage on NE Fremont and NE 56th Avenue. For the purpose of this review, this lot will be identified as the "Subject Property". The other lot is 12,562 square feet and has frontage on NE Fremont and NE 57th Avenue. It is developed with a 5,750 square foot commercial building. The building is located adjacent to the common property line of the two lots. There is additional surface parking between the building and NE 57th Avenue. Both parking areas serve the commercial building. Presently the building contains a large restaurant and pub—Fire on the Mountain. The restaurant also operates a small microbrewery. The beer is served at the establishment.

The Subject Property's abutting lot to the south is residentially zoned and developed with a new 2.5 story single-dwelling residence. The home is currently under construction. The two abutting lots to the south are currently vacant. The remaining lots that front NE 56th Avenue, as well as most of the lots in the immediate area, are developed with single-dwelling residences. NE 56th Avenue is fully improved with a paved roadway, curbs, sidewalks, curbs and planter strips on both sides of the street.

To the north, on the other side of NE Fremont is the 67-acre Rose City Cemetery. The cemetery owns a vacant, commercially zoned lot at the corner of NE Fremont and NE 57th Avenue. All 4 lots located at this intersection are zoned CN2. The lot located on the east side of NE 57th Avenue, directly across from the Fire on the Mountain restaurant, is a gas station with small convenience store. The site, kitty corner to the restaurant contains a large building with a mix of employment and commercial tenants including a restaurant.

Current Zoning: The Subject Property is currently zoned R2, Multi-Dwelling Residential 2,000. The R2 zone is a low density multi-dwelling zone. It allows approximately 21.8 dwelling units per acre. Density may be as high as 32 units per acre if amenity bonus provisions are used. Allowed housing is characterized by one to three story buildings, but at a slightly larger amount of

building coverage than the R3 zone. The major types of new development will be duplexes, townhouses, rowhouses and garden apartments. These housing types are intended to be compatible with adjacent houses. Generally, R2 zoning will be applied near Major City Traffic Streets, Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets.

The Subject Property is also within the h, Aircraft Landing overlay zone. The "h" overlay zone limits the height of structures and vegetation in order to provide safe operating conditions for aircraft in the vicinity of the Portland International Airport. The overlay zone will remain on the site.

Proposed Zoning: The requested zoning designation, Neighborhood Commercial 2 (CN2) is intended for small commercial sites and areas in or near less dense or developing residential neighborhoods. The emphasis of the zone is on uses which will provide services for the nearby residential areas, and on other uses which are small scale and have little impact. Uses are limited in intensity to promote their local orientation and to limit adverse impacts on nearby residential areas. Development is expected to be predominantly auto accommodating, except where the site is adjacent to a transit street or in a Pedestrian District. The development standards reflect that the site will generally be surrounded by more spread out residential development.

Retail uses such as restaurants and bars are allowed. Manufacturing and production uses, such as a microbreweries, are allowed, but limited to 10,000 square feet in floor area. The existing use and development on the site are consistent with the requirements of the CN2 zone.

Land Use History: City records indicate there was a prior land use review for this site. In 1963, the Planning Commission and City Council approved a zone change from A2.5 to A2.5P to permit the construction of a parking lot. The parking would serve a grocery store located east of the site (case file PC 4376). According to historic zoning maps, the P designation was removed in 1981, when the City's Comprehensive Plan Map was implemented.

Summary of Applicant's Statement: The applicant states, "The reasons for the request are to bring the existing use as a parking lot, and the proposed uses for parking, covered trash and patio seating into compliance...The adjacent lot, under same ownership, is being used as a mixed use commercial building, and is zoned CN2h. There is a Covenant on File with the city to bind the properties together for the purposes of complying with code requirements. Landscaping and other site amenities are proposed as part of the design, exceeding the 10 percent cost requirement." (Exhibit A.1)

Agency Review: A "Request for Response" was mailed January 26, 2012. The following Bureaus have responded with no issues or concerns regarding the Zoning Map Amendment request:

- Site Development Section of BDS (Exhibit E.7)
- Bureau of Parks-Forestry Division (Exhibit E.7)
- Life Safety Plan Review Section of BDS (Exhibit E.6)

Agencies that provided a written analysis are listed below. The comments are discussed under the findings, below.

- Bureau of Environmental Services (Exhibit E.1)
- Bureau of Transportation Engineering (Exhibit E.2)
- Water Bureau (Exhibit E.3)
- Police Bureau (Exhibit E.5)
- Fire Bureau (Exhibit E.4)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on February 14, 2012. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

ZONING MAP AMENDMENT

33.855.010 Purpose
This chapter states the procedures and approval criteria necessary to process an amendment to the base zones, overlay zones, plan districts, and other map symbols of the Official Zoning Maps. The chapter differentiates between amendments which are processed in a quasi-judicial manner and those processed in a legislative manner. A discussion of quasi-judicial and legislative is found in 33.700.070.

33.855.050 Approval Criteria for Base Zone Changes
An amendment to the base zone designation on the Official Zoning Maps will be approved (either quasi-judicial or legislative) if the review body finds that the applicant has shown that all of the following approval criteria are met:

A. Compliance with the Comprehensive Plan Map. The zone change is to a corresponding zone of the Comprehensive Plan Map.

1. When the Comprehensive Plan Map designation has more than one corresponding zone, it must be shown that the proposed zone is the most appropriate, taking into consideration the purposes of each zone and the zoning pattern of surrounding land.

   Findings: The Comprehensive Plan Map designates the site as Neighborhood Commercial. There are two corresponding zones that implement this designation—CN1, Neighborhood Commercial 1 and CN2, Neighborhood Commercial 2. Because the Subject Property abuts CN2 zoned sites and the existing development is consistent with its intended auto-accommodating character, the CN2 is most appropriate. This criterion is met.

2. Where R zoned lands have a C, E, or I designation with a Buffer overlay, the zone change will only be approved if it is for the expansion of a use from abutting nonresidential land. Zone changes for new uses that are not expansions are prohibited.

   Findings: This site does not have a Buffer overlay designation; therefore, this criterion does not apply.

3. When the zone change request is from a higher-density residential zone to a lower-density residential zone, or from the CM zone to the CS zone, then the approval criterion in 33.810.050 A.2 must be met.

   Findings: The requested zone change is not from a higher density residential zone to a lower density residential zone or from the CM zone to the CS zone. This criterion does not apply.

B. Adequate public services. Public services for water supply, transportation system facilities and capacity, and police and fire protection are capable of supporting the uses allowed by the zone or will be capable by the time development is complete, and proposed sanitary waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of Environmental Services.

1. Adequacy of services applies only to the specific zone change site.

2. Adequacy of services is determined based on performance standards established by the service bureaus. The burden of proof is on the applicant to provide the necessary analysis. Factors to consider include the projected service demands of the site, the ability of the existing and proposed public services to accommodate those demand numbers, and the characteristics of the site and development proposal, if any.

   a. Public services for water supply, and capacity, and police and fire protection are capable of supporting the uses allowed by the zone or will be capable by the time development is complete.

   b. Proposed sanitary waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of Environmental Services. Performance standards must be applied to the specific site design. Limitations on development level, mitigation measures or discharge restrictions may be necessary in order to assure these services are adequate.

   c. Public services for transportation system facilities are capable of supporting the uses allowed by the zone or will be capable by the time development is complete. Transportation capacity must be capable of supporting the uses allowed by the zone by the time development is complete, and in the planning period defined by the Oregon Transportation Rule, which is 20 years from the date the Transportation System Plan was adopted. Limitations on development level or mitigation measures may be necessary in order to assure transportation services are adequate.

Findings: The Subject Property is 7,600 square feet in area. Under the CN2 zone, the site could be redeveloped with a maximum commercial floor area that is equal to .75 times the area of the site or 5,700 square feet. There is no plan, at this time, for major redevelopment of the site. The applicant wishes to retain most of the existing parking, while adding an outdoor patio area and an enclosed trash collection area.

The City's service agencies considered the proposed improvements and when applicable evaluated the "worst case" build out that would be allowed in the CN2 zone. The Fire Bureau and BDS Site Development Review Section have noted "no concerns". The Bureaus of Environmental Services, Portland Bureau of Transportation, Water Bureau, and Police Bureau have responded with information about services at this location. Each bureau noted that adequate existing services are available. As documented below, this criterion is met.

SUMMARY OF AGENCY RESPONSES:

Bureau of Environmental Services (BES)
The Bureau of Environmental Services (BES) notes that there is a gravity sewer in both NE Fremont and NE 56th Avenue, available to provide sanitary services to the Subject Property. While there is no storm sewer available, there is a public underground injection control (UIC) system located near the intersection of NE Fremont and 56th Avenue that collects runoff from the public rights-of-way.

BES evaluated service availability for the proposed zone change and concluded that services are adequate, as explained below:

Sanitary. Per the 2007 Sewer and Drainage Facilities Design Manual, build-out under the requested zone (5,700sf of floor area, CN2) is assumed to be less intensive than the current base zone (3 dwelling units, R2) in terms of average and peak daily

sanitary flows. Therefore the sanitary sewer system is adequate to serve the site under the requested CN2 zone.

Stormwater. BES reviews development and redevelopment for compliance with the City of Portland's Stormwater Management Manual (SWMM). Projects must asses the feasibility of infiltration and accordingly provide stormwater management facilities on private property that meet pollution reduction, flow control, and discharge requirements. For this application, the applicant has included a development plan which shows that the site's existing surface (asphalt) will be left largely intact, with minor changes that include a trash and bike enclosure, a patio for restaurant seating, and landscaping. Though BES has not reviewed specific stormwater management information with this land use application, staff understands that there will be adequate remaining area on the lot to include stormwater management facilities should they be deemed necessary at the time of building permit review. Additionally, per the Request for Response notice for this application the requested zone (CN2) will only allow up to 5,700 square feet of building floor area and will require on-site parking and 15% landscaping, which would allow area for stormwater management facilities. Therefore there is adequate evidence that at the time of future development the stormwater disposal systems will be made acceptable to BES. During City review of future development on this site, BES will require a complete stormwater management report that meets the version of the SWMM that is current when building permit applications are submitted, as well as a utility plan. (Exhibit E.1)

Portland Transportation/Development Review (PBOT)

Portland Bureau of Transportation/Development Review (PBOT) has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations. PBOT has determined the proposal meets the approval criteria, based on the following analysis and conclusions:

Street Classification
At this location, NE Fremont St is classified as a Neighborhood Collector, Transit Access street, Local Service Bikeway, City Walkway, and a Community Corridor in the City's Transportation System Plan (TSP). NE 56th Ave is classified as a Local Service street for all transportation modes in the TSP.

Zone Map Amendment
The applicant has provided a Transportation Impact Study (TIS) prepared by Lancaster Engineering. The study was prepared to address transportation impacts associated with the proposed Zone Change. The TIS compares the reasonable worst-case development scenario for the existing R2h zoning (multi-dwelling residential) with the reasonable worst-case scenario for the proposed CN2 zoning (convenience store).

Historically, the site has been used for parking, serving the commercial use of the adjacent property to the east. That use will continue, although the change in zoning is necessitated by the use of a small portion of the outdoor activities associated with a restaurant on the adjacent property. However, the applicant's TIS addresses the potential long-term traffic impacts that could occur as a result in the change in zoning, regardless of the immediate planned use.

To compare the reasonable worst-case development of the subject property under both the existing and proposed zoning designations, development of the site with residential uses was compared to development as a convenience store, which was determined to be the most reasonable worst-case development assumption for the proposed CN2 zoning designation. The net increase in vehicle trips associated with these two scenarios determines the amount of impact that the proposed zone change could have on the adjacent transportation system.

The existing R2h residential zoning designation allows a density of 21.8 dwelling units per acre, with a possibility of up to 32 units/acre possible with density bonuses and similar provisions applied. The area of the subject site is 7,600 sf. Accordingly, up to 4 dwelling units could be constructed. For this density and for the purposes of estimating vehicle trip generation, the housing type was assumed to be row-houses or common-wall condominiums.

The proposed CN2 zoning allows a maximum building coverage of 65% of the site area, with a requirement that 15% of the site area be landscaped. Also, NE Fremont is not served by frequent transit to meet the Zoning Code's provision for waiving the on-site parking requirement for the site. As such, parking would need to be provided with a minimum of one space/500 sf of building area, plus provisions for loading.

For suburban uses, the applicant's traffic consultant makes a reasonable assumption that a retail building would occupy 25% of the site area, with the remainder being used for parking, landscaping, and other on-site amenities. The subject site is in an urban setting and more compact development is reasonable to expect. If half of the site were occupied by a building (which would be 3,800 sf in size), there would still need to be room for eight parking spaces plus loading, landscaping, and room for a driveway and on-site circulation. Based on the site size, this is not realistic.

If it is assumed that 35% coverage is possible (which would result in a 2,660 sf building), then a minimum of six on-site parking spaces would be required plus loading and landscaping. This scenario appears more reasonable for compact, urban development.

Commercial uses allowed in the CN2 zone may be somewhat limited for a building of this size. An assumption is made that it is unrealistic to expect a fast food restaurant to be located on the subject site, as traffic volumes on NE Fremont St or NE 57th Ave would not likely support it, and it would be out of character for the neighborhood. For the purpose of analysis in the TIS, a convenience store was determined to be a reasonable assumed use. The average size of convenience stores included in the Institute of Transportation Engineers Trip Generation (ITE) manual is between 2,000 and 3,000 sf. This is a reasonable fit for the subject site both in terms of building size and consistency with the character of the neighborhood.

Based on the ITE data, the applicant's TIS shows that a 4-unit condo/townhouse development would generate 2 AM peak hour trips 2 PM peak hour trips and a total of 24 daily trips. Utilizing a (PBOT supported) pass-by trip percentage for the convenience market use/scenario, the net new number of vehicle trips associated with a convenience store was estimated at 68 AM peak hour trips, 53 PM peak hour trips and 742 total daily trips.

To determine the existing traffic volumes at the study area intersections, the applicant's traffic consultant conducted manual turning movement counts. The

counts were done from 7:00 to 9:00 AM and from 4:00 to 6:00 PM in order to capture both the morning and evening peak hours.

Since the application proposes a change in zoning, an estimate of long-term traffic operations is required. A 20-year planning horizon of 2031 was used for the analysis. To estimate 2031 traffic volumes, an annual growth rate was used. The subject site is in an area of Portland that is largely built-out. New development over the next 20 years is expected to be limited to small in-fill development and not large developments that could result in significant increases in traffic volumes. In past projects for similar built-out neighborhoods on the east side of Portland, low annual growth rates, often less than one percent per year, have been derived. For this analysis, it was conservatively assumed that traffic volumes would increase at a rate of 1.5 percent per year for the next 20 years.

City of Portland operational standards require level of service E or better at unsignalized intersections and level of service D or better at signalized intersections. The (industry) standard capacity and operational analyses conducted by the applicant's traffic consultant show that the NE 56th Ave/NE Fremont St and NE 57th Ave/NE Fremont St intersections are both currently operating at a acceptable levels of service during both the morning and evening peak hours (LOS B). The intersections are shown to continue to operate well within City of Portland operational standards through the planning horizon of year 2031, either with or without the proposed zone change in place. It should be noted that the proposed zone change will not impact the studied intersections any further beyond what is expected within the 20-year planning horizon. The applicant has demonstrated that the area transportation system facilities and capacity will be capable of supporting the proposal in addition to existing uses in the area.

Although the submitted TIS contains an accurate analysis of this approval criterion, which adequately addresses the Oregon Transportation Rule, PBOT offers the following additional response to address this criterion.

The recently amended Transportation Planning Rule (effective January 1, 2012) generally requires a local government to determine whether certain regulatory amendments will "significantly affect an existing or planned transportation facility." The land use actions that trigger compliance with this requirement are amendments to a functional plan, comprehensive plan, or a land use regulation (including a zoning map amendment). (OAR 660-012-0060(1)) If the local government finds an amendment has a significant effect, it must take one or more specifically identified steps to address and remedy this conflict. (OAR 660-012-0060(2))

The amended TPR includes an exception to this general requirement for a zoning map amendment where the proposed new zoning is consistent with: (1) the comprehensive plan map designation for the site; and (2) the local Transportation System Plan. If both conditions are satisfied, the local government may find that the amendment "does not affect an existing or planned transportation facility." (OAR 660-012-0060(9)). In this case, the proposed CN2(h) zoning is consistent with Comprehensive Plan Map designation for the site and the local Transportation System Plan. Accordingly, the above referenced approval criterion is satisfied.

Street Improvements (Section 17.88)
According to City database sources, NE Fremont is improved with 36-ft of paving within a 60-ft right-of-way (r.o.w.). This site frontage is improved with a 0-12-0

sidewalk configuration. NE 56th Ave is improved with 24-ft of paving within a 60-ft r.o.w. This site frontage is also improved with a 10-6-2 sidewalk corridor.
There will be no frontage improvements or property dedication associated with the subject Zone Change request. However, the applicant is advised of the following: for a site located along a City Walkway street (classification), the Pedestrian Design Guide recommends a 12-ft pedestrian corridor (0.5-ft curb/4-ft planter area/6-ft/sidewalk/1.5-ft setback to the property line). The existing sidewalk corridor along NE Fremont does not satisfy the Design Guide's recommendation. The existing 12-ft wide sidewalk corridor along NE Fremont is wide enough, but at least according to Google street-view, there is no planter area nor are there any street trees. In the event of future redevelopment of the subject site. the applicant will be required to cut in appropriately sized tree wells and plant street trees along this frontage. The existing 18-ft wide sidewalk corridor along NE 56th Ave exceeds the above referenced recommendation, therefore, the applicant will not be required to reconstruct this property frontage. However, an additional street tree may be required to be planted (in the event of future redevelopment). (Exhibit E.2)

Portland Water Bureau
The Water Bureau submitted the following comments, "There are currently no water services to this property. There is an existing 16" CI water main in NE Fremont St and an existing 8" CI water main in NE 56th Ave, which fronts this property, and could be used to provide water service to this lot if desired in the future". (Exhibit E.3)

Police Bureau
The Police Bureau finds that it is capable of serving the site with the proposed zone change. (Exhibit E.5)

3. Services to a site that is requesting rezoning to IR Institutional Residential, will be considered adequate if the development proposed is mitigated through an approved impact mitigation plan or conditional use master plan for the institution.

   Findings: The requested rezoning is not to IR, Institutional Residential. This approval criterion does not apply.

C. When the requested zone is IR, Institutional Residential. In addition to the criteria listed in subsections A. and B. of this Section, a site being rezoned to IR, Institutional Residential must be under the control of an institution that is a participant in an approved impact mitigation plan or conditional use master plan that includes the site. A site will be considered under an institution's control when it is owned by the institution or when the institution holds a lease for use of the site that covers the next 20 years or more.

Findings: This criterion does not apply as the requested zone is CN2.

D. Location The site must be within the City's boundary of incorporation. See Section 33.855.080.

Findings: The referenced section in this criterion discusses automatic zoning map amendments for newly annexed properties. This situation does not apply because he subject site has been within the City's boundaries for many decades. This criterion is met.

Development Standards
Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of

Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant is requesting a zoning map amendment to change the existing zoning of R2, Multi-Dwelling Residential 2,000 to CN2, Neighborhood Commercial 2. The Subject Property is developed as accessory parking to serve the adjacent commercial use. The parking was developed in the 1960s and became a nonconforming use in 1981. The applicant is seeking this change in order to make additional improvements—an outdoor patio area and enclosed trash collection area, to serve the abutting retail use.

The proposed CN2 zoning is in conformance with the City's Comprehensive Plan designation. This request meets all of the applicable approval criteria and therefore should be approved.

TENTATIVE STAFF RECOMMENDATION

(May be revised upon receipt of new information at any time prior to the Hearings Officer decision)

Approval of a Zoning Map Amendment from R2, Multi-Dwelling Residential 2,000 to CN2, Neighborhood Commercial 2.

Procedural Information. The application for this land use review was submitted on December 21, 2011, and was determined to be complete on Jan 23, 2012.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on December 21, 2011.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the120-day review period. Unless further extended by the applicant, **the 120 days will expire on May 22, 2012.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the recommendation of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any

person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

This report is not a decision. The review body for this proposal is the Hearings Officer who will make the decision on this case. This report is a recommendation to the Hearings Officer by the Bureau of Development Services. The review body may adopt, modify, or reject this recommendation. The Hearings Officer will make a decision about this proposal within 17 days of the close of the record. Your comments to the Hearings Officer can be mailed c/o the Hearings Officer, 1900 SW Fourth Ave., Suite 3100, Portland, OR 97201 or faxed to 503-823-4347.

You will receive mailed notice of the decision if you write a letter received before the hearing or testify at the hearing, or if you are the property owner or applicant. This Staff Report will be posted on the Bureau of Development Services website. Look at www.portlandonline.com. On the left side of the page use the search box to find Development Services, then click on the Zoning/Land Use section, select Notices and Hearings. Land use review notices are listed by the District Coalition shown at the beginning of this document. You may review the file on this case at the Development Services Building at 1900 SW Fourth Ave., Suite 5000, Portland, OR 97201.

Appeal of the decision. The decision of the Hearings Officer may be appealed to City Council, who will hold a public hearing. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

Who can appeal: You may appeal the decision only if you write a letter which is received before the close of the record for the hearing, if you testify at the hearing, or if you are the property owner/applicant. Appeals must be filed within 14 days of the decision. **Appeals must be filed within 14 days of the decision. An appeal fee of $5,000.00 will be charged (one-half of the BDS application fee, up to a maximum of $5,000).**

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

Recording the final decision.
If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County

Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of approval. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

Planner's Name: Sheila Frugoli
Date: February 24, 2012

EXHIBITS
NOT ATTACHED UNLESS INDICATED

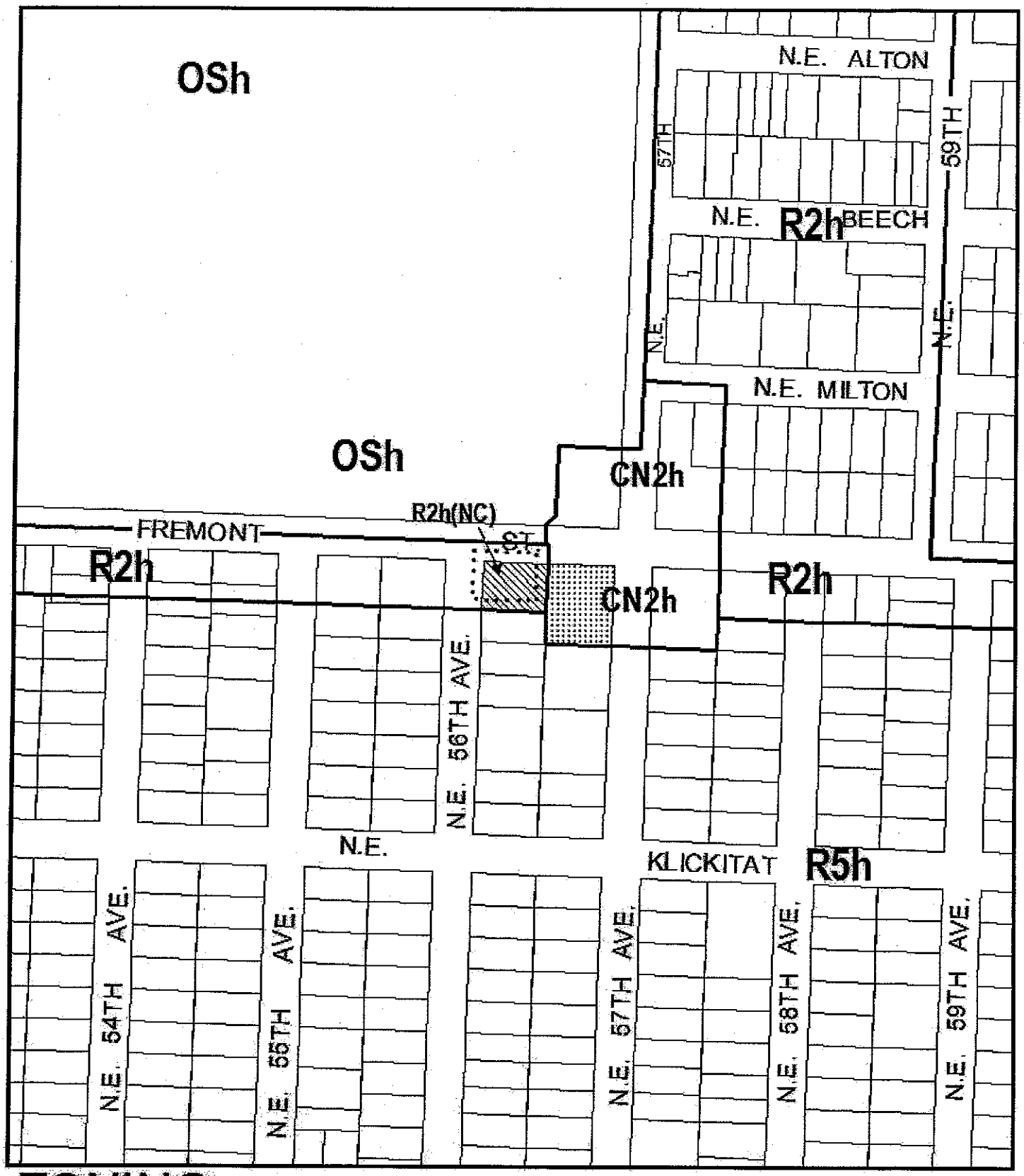
A. Applicant's Statement:
   1. Project Description and Response to Approval Criteria
   2. Copy of Covenant - Prohibits Selling Two Lots Separately
   3. Traffic Impact Study, prepared by Lancaster Engineering
B. Zoning Map (attached):
   1. Existing Zoning
   2. Proposed Zoning
C. Plans & Drawings:
   1. Site Plan, Identifies Zone Change Proposal (attached)
   2. Site Plan Identifies Proposed Improvements and Abutting Lots (attached)
   3. Site Plan, Details the Proposed Improvements
   4. Trash Enclosure Proposal – Elevation and Details
   5. Site and Utility Plan
D. Notification information:
   1. Request for response
   2. Posting letter sent to applicant
   3. Notice to be posted
   4. Applicant's statement certifying posting
   5 Mailing list
   6. Mailed notice
E. Agency Responses:
   1. Bureau of Environmental Services
   2. Bureau of Transportation Engineering and Development Review
   3. Water Bureau
   4. Fire Bureau

5. Police Bureau
6. Life Safety Review Section of BDS
7. TRACS Print-Out Showing "No Concerns" from Site Development Review Section of BDS and Bureau of Parks, Forestry Division

F. Letters: NONE

G. Other:
1. Original LUR Application
2. Site History Research
3. Incomplete Application Letter to Applicant
4. Pre-Application Conference Summary

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).

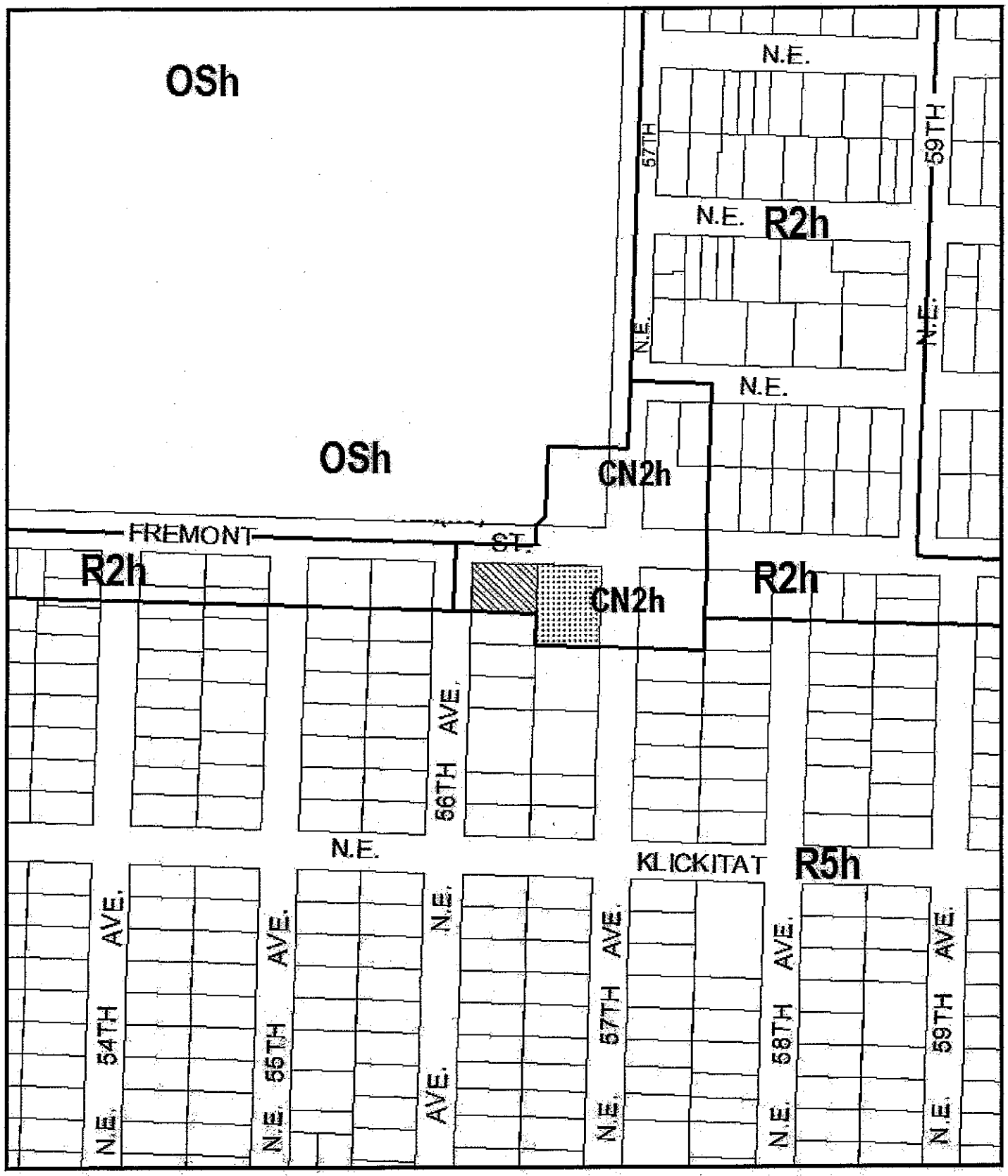


ZONING Site
Also Owned

EXISTING

NORTH

File No. LU 11-203423 ZC
1/4 Section 2736
Scale 1 inch = 200 feet
State_Id 1N2E30AB 1000
Exhibit B (Jan 24,2012)



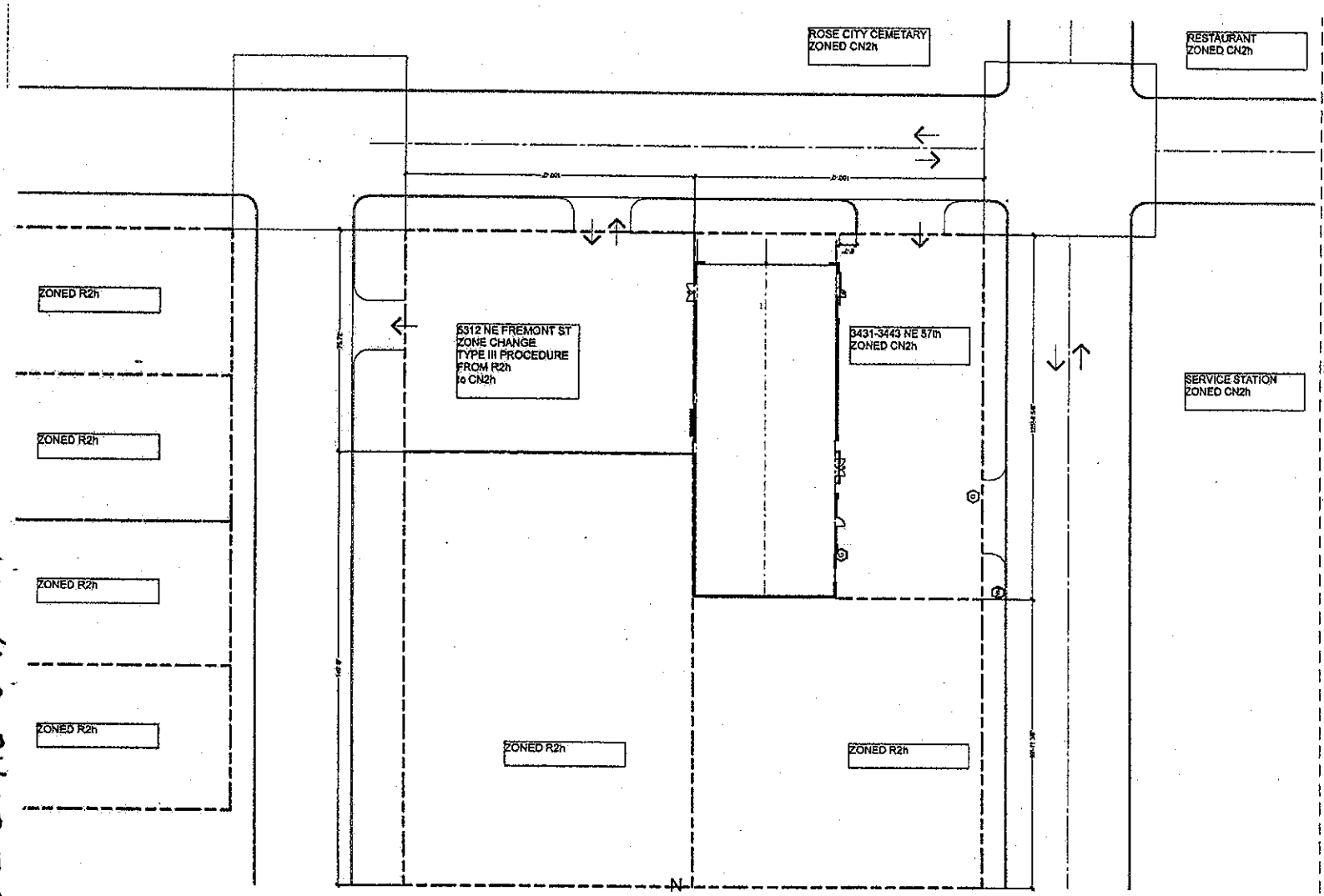
ZONING PROPOSED

Site

Also Owned

NORTH

File No.	LU 11-203423 ZC
1/4 Section	2736
Scale	1 inch = 200 feet
State_Id	1N2E30AB 1000
Exhibit	B (Dec 22,2011)



1 A-1 ZONING PLAN
SCALE: 1/8" = 1'-0"

LU 11-203423 ZC
Exhibit C.1

JULIA WOOD
ARCHITECT

REGISTERED ARCHITECT
JULIA WOOD
PORTLAND, OREGON
STATE OF OREGON

ZONE CHANGE
5312 NE FREMONT STREET
PORTLAND, OR 97213

PROJECT #: 11-024
DRAWN BY: JAW

RELEASE DATE

MARK	DATE	DESCRIPTION
	12.12.2011	TYPE III SUBMITTAL

SET NOTES

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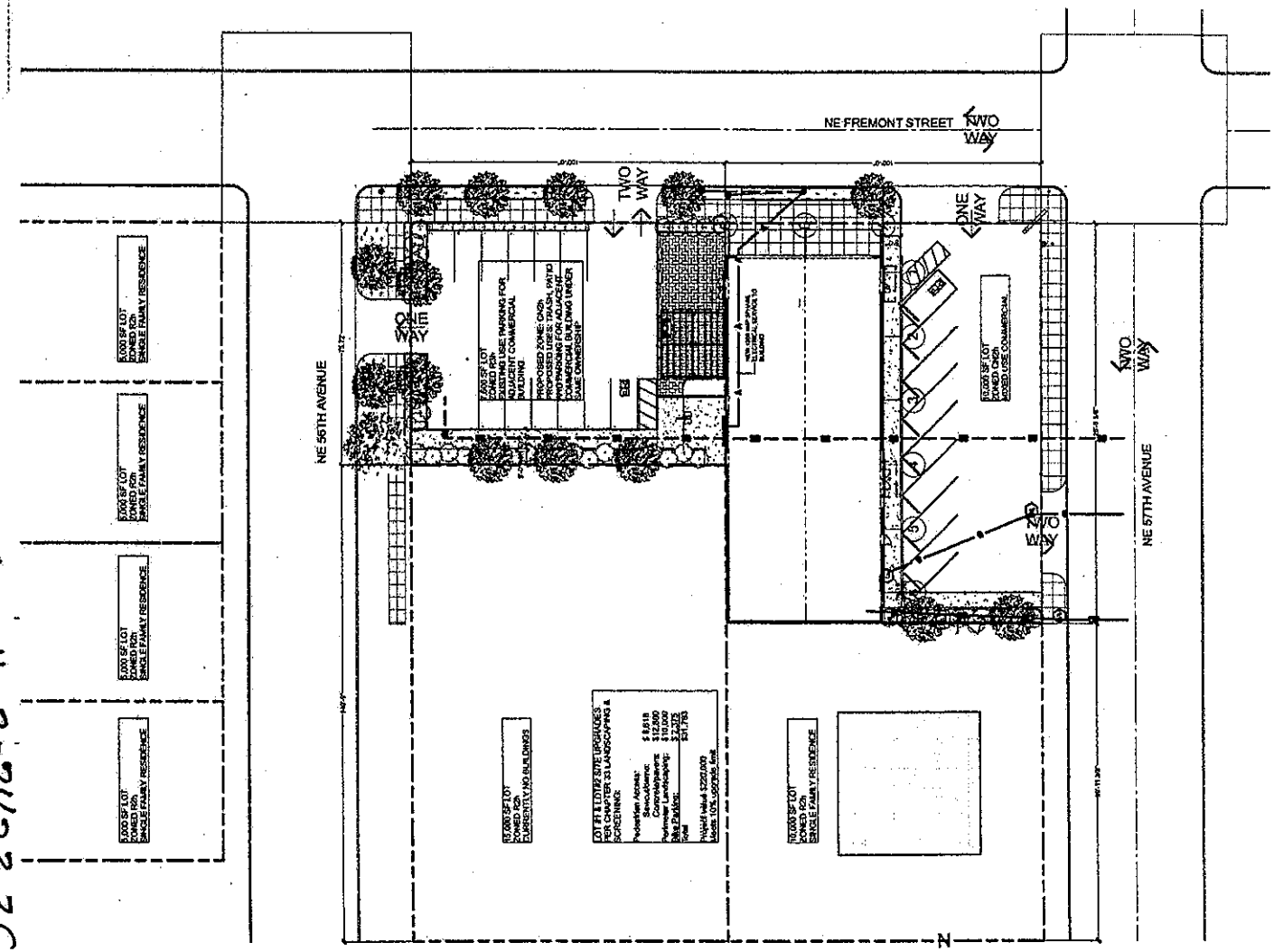
A1

ZONING PLAN



1 A2 NEIGHBORHOOD PLAN-ZONE CHANGE
SCALE 1/16" = 1'-0"

LU 11-203423 ZC
Exhibit C.2

JULIA WOOD
ARCHITECT

REGISTERED ARCHITECT
STATE OF OREGON

ZONE CHANGE
5612 NE FREMONT STREET
PORTLAND, OR 97213

PROJECT #: 11-024
DRAWN BY: JAW

RELEASE DATE

MARK	DATE	DESCRIPTION
	12.12.2011	TYPE III SUBMITTAL

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A 2

NEIGHBORHOOD PLAN